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INTRODUCTION

A well-known New York *Times* columnist, whose last journalistic venture into the affairs of Allegheny County, Pennsylvania, consisted in a rapturous ode to the Pittsburgh Pirates baseball team, recently addressed himself to a more prosaic problem. In a column headlined "Pittsburgh: The Darker Side of the Golden Triangle," James Reston wrote:

> The promise of spring is on the Pittsburgh hills today. The willows stand out soft and green on the grim and wrinkled river slopes, like daffodils scattered on a slag heap. The spectacular roller coaster highways hum with traffic above the Golden Triangle, and the sky is stained with copper-colored iron oxide smoke from the great steel mills along the Ohio. Yet Pittsburgh is not exactly in a hopeful springlike mood. It is a crippled giant, immensely powerful but chained by unemployment, potentially a vast unified industrial empire stretching up the river valleys, but actually a politically divided complex of almost 200 different municipal authorities. All the political, economic and social problems of urbanized and industrialized America are dramatized here: the conflict of men and machines, the conflict of city and suburban governments, the waste of idle men and machines, the paradox of too few skilled workers and too many unskilled workers in the increasingly automatic factories.[1]

It is doubtful whether the complex of almost 200 different municipal authorities in Allegheny County has anything to do with unemployment. But it is certain that Mr. Reston has, in these words, touched on a key issue concerning local government in this and in a great many other metropolitan regions in the country. E. A. Gutkind would easily extend the problem beyond national boundaries: "That administrative boundaries can be a great hindrance is well known. The problem has been demonstrated in the incorporation of numerous outer communities in the metropolitan areas of Greater London, Greater New York, Greater Paris, Greater Berlin, Greater Tokyo, and in many other cases."[2] Moreover, he feels, national governments—the "State"—have increasingly failed throughout history to remove the hindrance.

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1. Wednesday, April 3, 1963; 46:3.

2. GUTKIND, THE TWILIGHT OF CITIES 46 (1962).

> True, he says, in some countries the State has taken a certain interest in city development, as, for instance, in England or the U.S.S.R. But these activities can hardly be compared to the great achievements of the past. They are more or less restricted to financial support, a few administrative remedies, and other minor alleviations. The cities and towns have been thrown back upon their own initiative and the competition between them makes schemes on a regional scale impossible.[3]

This is the nub of the problem. How is a city to go about performing its traditional functions of satisfying certain needs of its inhabitants when the inhabitants' needs know no jurisdictional boundaries and when the needs to be satisfied are regional in nature and have no particular ties with one city or another? What, in any case, is a "city"? If it is anything like a nation or a state within our federal system, why can it not lay claim to its own sphere of interests without constantly being forced by other power groups of all sorts and at all levels to redefine its sphere of interest? The answer, of course, is that a city is nothing like a nation or a state. It is a subdivision of the state, among many subdivisions. At the beginning of 1956 Pennsylvania had 6000 of these hybrid, ill-defined municipal units. There were 941 boroughs, 50 cities, 67 counties, one incorporated town, 73 first class townships, 1496 second class townships, 2436 school districts, 66 institutional districts and about 1000 authorities.[4] The political map of Allegheny County has been described as:

> an incredible crazy quilt: the 15 largest units (in terms of land area) cover one-half of the county, but, at the other extreme, 45 units occupy less than 1.0 square mile each, and two other fragments are pieces of boroughs which straddle the county line. . . . Inequalities of this character are not unknown to other metropolitan areas, but in the case of Allegheny County, the political fragmentation of the area has made it almost inevitable that extreme inequalities would occur. Furthermore, this fragmentation is not necessarily tending to get any better; in fact, new incorporations continue to occur; some of these result in the creation of additional new units.[5]

To mention but one outcome of the jurisdictional fragmentation of Allegheny County:

> Not only do real property tax rates in the community . . . vary from a high effective rate of 3.83 percent in Wall to a low rate of

3. *Id.* at 70.

4. HANCOCK, *Pennsylvania Local Government*, PA. STAT. ANN. tit. 53, §§ 1-3500, p. 43 (1957).

5. PICKARD, CHANGING LAND USES AS AFFECTED BY TAXATION 36 (1962).

> 1.28 percent in Lincoln (including school, municipal and county tax rates combined)—a variation of more than 3 to 1, but a flock of added local taxes has succeeded in creating a confused local tax jungle—a veritable hodge-podge of per capita "head" taxes, earned income taxes, personal property (levied also by the county), mercantile, amusement, deed transfer, trailer, mechanical devices, and occupation taxes—all levied locally—some by municipal taxing bodies, some by school districts; in some areas by both—and in adjoining areas, by neither. . . . Only the boroughs of Homestead, West Homestead and East Pittsburgh —all old, well-established industrial enclaves—levied solely the real property tax in 1960; the 126 other jurisdictions in Allegheny County had at least one or more additional non-property taxes.[6]

Problems arising in this context, broadly within the ambit of "regional planning," are manifold. "There is almost no uniformity among the zoning, subdivision, and building controls that are operative throughout a metropolitan area," according to Martin Meyerson.[7]

> As a result there is frequently a mixture of land uses that is unsightly and costly; there are severe diseconomies to the builder, who cannot easily assemble land in quantity or build to consistent specifications; and finally, there is an inequitable allocation of housing and community facilities. There is no doubt that suburban zoning, subdivision and building regulations help maintain the density of the central cities by making access to new residential areas more difficult.[8]

METROPOLITAN GOVERNMENT AND ANNEXATION

It is thought that certain changes in the law would assist regional planning in Pittsburgh, as elsewhere, and remove some of the barriers to the city's general well-being such as the tax and building regulations "hodge-podge." Among the alternative courses of action that could be taken by the General Assembly the most obvious is the process of annexation and consolidation of municipalities. If there are so many municipalities and if by sheer force of numbers they frustrate rational government, why not reduce their numbers? Why not, in short, consolidate Pittsburgh and the other 128 governing entities in Allegheny County into one metropolitan government? The state Bureau of Municipal Affairs reported in 1959 that the General Assembly was indeed adopting legislation easing the annexation process for certain political subdivisions "which are inter-

6. *Id.* at 40.

7. MEYERSON, TERRETT and WHEATON, HOUSING, PEOPLE AND CITIES 318 (1962).

8. *Ibid.*

ested in this procedure," but all the acts listed were restricted to boroughs and third class cities.[9] Nothing in the nature of metropolitan government was contemplated for a city of Pittsburgh's size and complexity, where the need would conceivably be the greatest.

The Commonwealth, nonetheless, evidenced some concern for consolidation in big-city areas when it was resolved, by the Act of Feb. 2, 1854, P.L. 16, that:

> § 1 . . . the corporate name of the mayor, alderman and citizens of Philadelphia shall be changed to "The City of Philadelphia," and the boundaries of the said city shall be extended so as to embrace the whole of the territory of the county of Philadelphia, and all the powers of the said corporation, as enlarged and modified by this act, shall be exercised, and have effect within the said county and over the inhabitants thereof.
>
> § 6 . . . the city of Philadelphia as established by this act, shall be vested with all the power, rights, privileges and immunities incident to a municipal corporation and necessary for the proper government of the same.

On November 7, 1922, Article XV of the constitution—"Cities and City Charters"—was amended to read:

> § 1 Home Rule for Cities
>
> Cities may be chartered whenever a majority of the electors of any town or borough having a population of at least ten thousand shall vote at any general or municipal election in favor of the same. Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations, and regulations as may be imposed by the Legislature. Laws may also be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof, and approved by a majority of those voting thereon.

Philadelphia adopted its "home rule" charter on April 17, 1951, effective January 7, 1852, pursuant to the provisions of the First Class City Home Rule Act of April 21, 1949, P.L. 665, 53 P.S. § 13101:

> Cities empowered to adopt and amend charters.
>
> Any city of the first class may frame and adopt a charter for

9. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF INTERNAL AFFAIRS, INTERNAL AFFAIRS, monthly bulletin, Vol. 27, Nos. 8-9, Aug.-Sept. 12-13 (1959).

> its own government and may amend its charter whether the same has been originally adopted under the provisions of this act or provided by local, special or general law.

Soon thereafter came the final consolidation of all governmental functions in the city and county of Philadelphia, by constitutional amendment of November 6, 1951:

> Article XIV, section 8. City and County of Philadelphia; Consolidation of governmental functions; County officers abolished.
>
> (1) In Philadelphia all county officers are hereby abolished, and the city shall henceforth perform all functions of county government within its area through officers selected in such manner as may be provided by law.
>
> (2) Local and special laws regulating the affairs of the city of Philadelphia and creating officers or prescribing the powers and duties of officers of the city of Philadelphia, shall be valid notwithstanding the provisions of section seven of article three of this Constitution.
>
> (3) All laws applicable to the county of Philadelphia shall apply to the city of Philadelphia.
>
> (4) The city of Philadelphia shall have, assume and take over all powers, property, obligations and indebtedness of the county of Philadelphia. . . .

The residents of Philadelphia now have their own charter, home rule, and to the extent that they are relieved of city-county jurisdictional complications, some measure of metropolitan government. But how much has their situation really changed? Pennsylvania Supreme Court Chief Justice Bell, in *Cali v. City of Philadelphia*,[10] doubted that the change was very significant:

> When the city-county consolidation amendment of 1951, i.e. Article XIV, Section 8, was adopted, very many citizens of Philadelphia believed they were authorized to adopt their own unrestricted Home Rule Charter, and when they adopted their Home Rule Charter they undoubtedly believed that they were securing for themselves what they had long sought and what the Legislature had for years denied them, namely, full and complete home rule so far as local officers, local conditions and affairs and local self-government were concerned. Unfortunately the hereinbefore quoted provisions of the Constitution, and as we shall see the Enabling Act, i.e., the First Class City Home Rule Act of 1949, supra, which authorized and limited the

10. 406 Pa. 290, 177 A.2d 824 (1962).

> Charter's very existence make clear that they acquired no such absolute and unconditional untrammeled right. Although this is clear and indisputable, it is so often overlooked or emotionally glossed over that we shall repeat: the Constitution granted and reserved to the Legislature and the Legislature in turn, in granting home rule to Philadelphia, i.e., the right to frame and adopt a Charter, clearly and specifically reserved to itself *the power to impose restrictions, limitations and regulations on any First Class City Home Rule Charter.*[11]

Justice Bell was here merely echoing the opinion of Judge Sharswood of the state supreme court in *Philadelphia v. Fox*,[12] decided in 1870. The court there articulated, in reference to Philadelphia, a well-entrenched rule of law pertaining to all municipal subdivisions in Pennsylvania:

> The city of Philadelphia . . . is merely an agency instituted by the sovereign for the purpose of carrying out in detail the objects of government—essentially a revocable agency—having no vested right to any of its powers or franchises—the charter or act of erection being in no sense a contract with the state—and therefore fully subject to the control of the legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangement, or destroy its very existence, with the mere breath of arbitrary discretion. *Sic volo, sic jubeo,* that is all the sovereign authority need say.
>
> The Legislature of this Commonwealth, under the Constitution, could not by contract invest any municipal corporation with an irrevocable franchise of government over any part of its territory. It cannot alienate any part of the legislative power which, by the Constitution, is vested in a General Assembly annually convened . . . . If the Legislature were to attempt to erect a municipality with a special provision that its charter should be unchangeable or irrevocable, such provision would be a nullity. . . .
>
> Such political institutions (municipalities) have not and cannot have any vested rights as against the state.[13]

The same view was reiterated in even stronger terms by the leading case of *Commonwealth v. Moir*,[14] where Judge Mitchell said:

> Municipal corporations are agents of the state, invested with certain subordinate governmental functions for reasons of

11. *Id.* at 297-8, 177 A.2d at 828.
12. 64 Pa. 169 (1870).
13. *Id.* at 180-181.
14. 199 Pa. 534, 49 Atl. 351 (1901).

> convenience and public policy. They are created, governed, and the extent of their powers determined, by the legislature, and subject to change, repeal, or total abolition at its will. They have no vested rights in their offices, their charters, their corporate existence, or their corporate powers. This is the universal rule of constitutional law, and in no state has it been more clearly expressed and more uniformly applied than in Pennsylvania.[15]

Still, Philadelphia has the right under its charter to handle its administrative affairs without fear of intervention from the General Assembly. The disinction was drawn by Chief Justice Stern, in *Lennox v. Clark*,[16] in the following terms:

> The limitations of power referred to in section 18 (of the First Class City Home Rule Act) concern only laws in relation to substantive matters of State-wide concern, such as health, safety, security and general welfare of all the inhabitants of the State, and not to matters affecting merely the *personnel and administrators* of the offices local to Philadelphia and which are of no concern to citizens elsewhere. Any other conclusion would reduce the Charter to a mere scrap of paper and make the much heralded grant of Philadelphia home rule an illusion and a nullity.[17]

Going back to the original question of metropolitan government and Pennsylvania's experience in that area, it would seem on the basis of developments in Philadelphia that nothing substantial has been accomplished since the enactment of the city-county consolidation act of 1854. Whether, even then, it eliminated problems of the nature and scope now confronting Pittsburgh and Allegheny County is open to question. But it cannot be gainsaid that one problem, however minor, was eliminated: The county of Philadelphia can never be at odds with the city of Philadelphia, for they are one and the same.

Pittsburgh, meanwhile, has had its own opportunities to acquire metropolitan home rule privileges from the Commonwealth. By constitutional amendment of November 6, 1928 and November 7, 1933 section 4—"Power of Legislature to provide for consolidated city and county Comprising County of Allegheny and municipalities therein"—was added to Article XV:

> The General Assembly is hereby authorized to provide for the

15. *Id.* at 541, 49 Atl. at 352; *cf.* Lighton v. Abington Tp., 336 Pa. 345, 9 A.2d 609 (1939) and Shirk v. Lancaster, 313 Pa. 158, 162, 169 Atl. 557 (1933).

16. 372 Pa. 355, 93 A.2d 834 (1954).

17. *Id.* at 379, 93 A.2d at 844.

consolidation of the county, poor districts, cities, boroughs and townships of the county of Allegheny, and the offices thereof, into a consolidated city and county, with the constitutional and legal capacity of a municipal corporation, to be known either as "Greater Pittsburgh," or "Metropolitan Pittsburgh" or "City of Pittsburgh (Metropolitan)," and to provide for a charter for its government, and to fix the name thereof in the charter. The said charter shall be submitted to the electors of said county at a special or general election to be provided for therein. If the majority of the electors voting thereon in the county as a whole, and at least a majority of the electors voting thereon in each of a majority of the cities, boroughs and townships thereof, vote in the affirmative, the act shall take effect for the whole county.

If rejected, the said charter may be resubmitted by the county commissioners to the electors from time to time, but not oftener than once in two years, until adopted. . . .

It shall be competent, subject to the police power of the State, for the Legislature to provide in said charter:

VI. For the assesment of property for taxation, the levying and collecting of taxes, and the payment of the cost of any public or municipal improvement, in whole or in part, by special assessment upon abutting and non-abutting property specially benefited thereby.

VII. For the creation, by the board of commissioners, of districts for the purpose of regulating the location, height, area, bulk and use of buildings and premises. . . .

VIII. . . . .

IX. For the creation, by the board of commissioners, of special districts for the purpose of carrying on or carrying out any public or municipal improvement, not for the exclusive benefit of any one municipal division. . . .

X. For the exercise of such powers by the consolidated city as may be necessary to enable it to carry on and carry out such municipal and metropolitan powers and functions as the General Assembly may deem advisable and expedient and for the general welfare of the said city and its inhabitants:

Provided, however, that it is the intent of this section that substantial powers be reserved to the cities, boroughs and townships situated in Allegheny County. To this end the charter shall provide for the continued existence of the said cities, boroughs and townships, as municipal divisions and forms of

> government, subject to the laws now or hereafter provided for government of municipalities of their respective forms and classes and to the powers conferred upon the consolidated city by the charter, and with their present boundaries. Any two or more of said municipal divisions, or portions thereof, may, with the consent of a majority of the electors voting thereon in each of such divisions at any special or general election, be united to form a single municipal division. Wherever a portion of a municipal division is involved, the election shall be held in the entire municipal division of which the said portion is a part.
>
> The said municipal divisions shall have and continue to have the following powers:
>
> V. All other powers not specifically granted by the charter to the consolidated city: Provided, however, that a municipal division may surrender, by a majority vote of the electors voting thereon at any general or special election, any of its powers to the consolidated city, subject to the acceptance thereof by the board of commissioners.

Under these provisions and pursuant to the Act of 1929, April 8, P.L. 603 the three commissioners of Allegheny County submitted to the county electors at a special election on June 25, 1929, the question of the adoption of a proposed charter for the "consolidated city of Pittsburgh." It was rejected. The Metropolitan Plan Commission thereupon requested the commissioners to resubmit the question at the November, 1929, election or as soon as possible thereafter, but the State Supreme Court, in *O'Connor v. Armstrong*,[18] (1930), thwarted their attempt. According to Judge Simpson only the General Assembly had the power to resubmit the charter for adoption. The commissioners "were without power in the premises" and were accordingly enjoined "from proceeding further in the matter."[19] The present status of metropolitan home rule in Pittsburgh is set forth in the report of the Metropolitan Study Commission, created by the General Assembly in May, 1951, "to promote the uniform development of Allegheny County."[20]

> The Commission decided that constant changes occurring in a growing metropolitan area require changes in governmental activities. It believes these changes could best be achieved by

18. 299 Pa. 390, 149 Atl. 655 (1930).

19. *Id.* at 657; *cf.* In re City of Pittsburgh's City Charter, 297 Pa. 502, 147 Atl. 524 (1929).

20. *Report of the Metropolitan Study Commission,* a summary of this Commission's 269-page report, reprinted from the Pittsburgh *Post-Gazette* and distributed by the Pittsburgh Chamber of Commerce 1 (1955).

> permitting voters of the County to make necessary amendments to the charter under which they are governed. "After considering various alternative approaches to the provision of an adequate governmental structure for the Allegheny County metropolitan area," the Commission said, it "concludes and recommends that the State Constitution be amended so as to permit the voters of Allegheny County to draft and adopt a home rule charter. . . ." This constitutional amendment, to be known as the "Urban Home Rule Charter Amendment," would grant to Allegheny County all powers and authority of local self-government and would provide for a form of County government and for the exercise of any and all powers relating to its functions. . . . Enactment of a constitutional amendment would require approval of two successive Legislatures and a state-wide referendum. The proposed new charter would also have to be submitted to a referendum of the County's voters.[21]

The chances of success for such a scheme are practically non-existent. The Pennsylvania Commission on Constitutional Revision reported in 1959 that:

> The General Assembly has been reluctant to approve recommendations for change in the Constitution. This is especially evident from the record of the past 30 years. In that time a total of 837 joint resolutions to amend the Constitution have been introduced. Only 285 received sufficient consideration to be reported from committee and just 117 were approved at least once by both House and Senate. Of the 38 that finally reached the voters, 26 were approved. Attempts at a general revision of the present Constitution through constitutional conventions have had no success. The five times that the question of holding a convention has been submitted to the people have all resulted in heavy defeats.[22]

It concluded that the best means of effectuating the advisable changes in the Constitution is by amendment. The argument has been advanced elsewhere, however, that the Commission, in proposing the achievement of its reform program by "piecemeal amendment," is bound to meet "insuperable difficulties. Even if the commission should accomplish the unbelieveable feat of persuading the General Assembly to pass through two successive sessions the bulk of its proposals, it would have before it the far more difficult task of awakening public interest and persuading the voters to cast a vote on a bewildering long list of amendments."[23]

21. *Id.* at 24.

22. PENNSYLVANIA COMMISSION ON CONSTITUTIONAL REVISION, *Report, 1959,* 10-11.

23. BRANNING, PENNSYLVANIA CONSTITUTIONAL DEVELOPMENT 156 (1960).

The whole idea of metropolitan government may be a source of bewilderment to voters, and that in itself may constitute a barrier to popular acceptance. Scott Greer, speaking of efforts to create metropolitan governments in St. Louis and Pittsburgh since 1933, notes that "in the intervening twenty-eight years dozens of efforts have been made to recreate the governmental form of the city in a metropolitan image; until 1957 there was not one single success. . . . Both the record of consistent failure," he said, "and the continuing efforts at change are impressive regularities."[24] In his opinion the opposition to metropolitan government is rationalized in many ways:

> Major themes, appearing over and over again, are these: fear of the unknown (big government), caution ("why rock the boat?" "leave well enough alone"), loyalty to, and pride of place in, the existing city, suspicion that the city will get the short end of the bargain, political suspicion of the crusading outsiders, who are not a part of the team and whose campaign comes close to condemnation of the existing government.[25]

In the suburbs, Greer says, the opposition is more diffuse and less professional, but:

> It will be rationalized in ways quite similar to those of central city opponents. Fear of the unknown, caution, loyalty to a suburban municipality, combine with fear that the city will dominate the new government and thus the suburbs. . . . In city and suburbs alike the leaders are easily convinced that "the others" will get the better of the bargain.[26]

Perhaps a more justifiable ground for opposition lies in the fact, pointed out by Professor Meyerson in reference to multiple housing controls, that:

> This problem would not necessarily be quickly solved if there existed a metropolitan government. Housing measures—such as relocation or a change in density—which are politically infeasible on an intercity basis do not become feasible merely by enlarging the area. Furthermore, the imposition of minimum standards throughout a metropolitan area may easily go beyond their necessary purpose of safeguarding the health and safety of the community to infringe on the essential freedom of the individual by requiring him to buy more housing and related facilities than he wants.[27]

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24. GREER, THE EMERGING CITY 181 (1962).
25. *Id.* at 185.
26. *Ibid.*
27. MEYERSON, *op. cit. supra* note 7, at 318.

Similar considerations could conceivably apply in other areas where urban jurisdictional complexes are thought to hamper progress. There is, at any rate, a pattern of legislative permissiveness coupled with public, or political intransigence. City dwellers seem reluctant to do what the law, in all its flexibility (or is it ambiguity?) actually encourages them to do. The people balk at regional government even where the law eggs them on.

Such was the case when the old city of Allegheny was consolidated with Pittsburgh in 1906. The state supreme court in *Sample v. City of Pittsburgh*,[28] invalidated the Act of April 20, 1905, P.L. 161, enabling the cities of Allegheny and Pittsburgh to consolidate, on the grounds that it was "special legislation" in violation of section 7(2) or Article III of the constitution. The General Assembly, in a special session, met the court's objections promptly wth the enactment of the Act of February 7, 1906, P.L. 1, and by its provisions both the state supreme court in *In re City of Pittsburgh, Appeal of Hunter*,[29] and the United States Supreme Court, in *Hunter v. City of Pittsburgh*,[30] sanctioned the consolidation. The General Assembly had originally provided in 1905 that:

> § 1 . . . Where two cities situate in the same county, are or may be contiguous to each other, the city having the smaller population, as shown by the last preceding United States census, may be annexed to the city having the larger population. . . .
>
> For the purpose of this act, cities separated by a stream, river or highway, shall be included under the term contiguous. . . .
>
> § 4 If it shall appear by the vote . . . that a majority of all the qualified electors of the two cities . . . have voted in favor of annexation, the said court of quarter sessions shall enter a decree annexing the smaller city . . . to the larger city . . . but if a majority . . . have voted against annexation, the proceeding shall be dismissed, and the question of annexation shall not again be submitted to the vote of the electors for a period of less than one year from the date of said election.

Judge Mestreza, in the *Sample* case, based his holding of unconstitutionality on the settled rule that:

> The test whether a statute is local and special legislation within the prohibition of the Constitution is whether it operates upon all counties or cities alike, and, when they are properly classified, it acts upon all counties or cities of the same class alike . . .

28. 212 Pa. 533, 62 Atl. 20 (1905).
29. 217 Pa. 227, 66 Atl. 348 (1907).
30. 207 U.S. 161 (1907).

> The court will look at the substance and not the form of legislation . . . As we take judicial cognizance of the municipal divisions of the state, as well as of their location, we know . . . that the cities of Allegheny and Pittsburgh . . . are the only two contiguous cities in the state and that there are no two contiguous cities in any other county in the state. The act, therefore, is limited in its operation to these two cities, and the effect or result of the legislation is the same, and the act as clearly special as if the names of the two cities had been written in the statute.[31]

The corrected statute of 1906, entitled "An act to enable cities that are now, or may hereafter be, contiguous or in close proximity, to be united, with any intervening land other than boroughs, in one municipality; providing for the consequences of such consolidation, the temporary government of the consolidated city, payment of the indebtedness of each of the united territories, and the enforcement of debts and claims due to or from each other," provided that:

> § 1 . . . Wherever, in this Commonwealth, now or hereafter, two cities shall be contiguous or in close proximity to each other, the two, with any intervening land other than boroughs, may be united and become one by annexing and consolidating the lesser city, and the intervening land other than boroughs, if any, with the greater city, and thus making one consolidated city, if at an election . . . there shall be a majority of all the votes cast in favor of such union.[32]

The two statutes were then compared by Judge Brown in *In re City of Pittsburgh:*

> At this point it may be well to call attention to the clear line of demarcation between this act, and that of April 20, 1905, P.L. 221, known as the 'Cook Law,' and declared to be unconstitutional in *Sample v. Pittsburgh*[33]. . . . So clearly was it bald, special, local legislation that it might well have been labeled an act for the consolidation of the cities of Pittsburgh and Allegheny.

Turning to the Act of 1906, he stated:

> Whether two cities ought to be consolidated is purely a legislative question, and the general act providing for their consolidation is not forbidden legislation. The power of the legislature to provide for the annexation of cities is not limited by the constitution. What it may not now do is to regulate, by a local

31. 212 Pa. at 539-542, 62 Atl. at 204-205.

32. 217 Pa. at 231-236, 66 Atl. at 350-352.

33. Citations omitted.

> or special law, the affairs of cities. In providing for the annexation of any two cities of the Commonwealth there is no regulation of the affairs of any two particular cities. The provision is simply for such annexation, if certain, natural, and, what may be regarded as necessary conditions exist.
>
> The legislature may . . . have provided for the consolidation of cities without regard to the distance between them, absorbing in their consolidation all the intervening space, whether occupied by boroughs or townships. But such legislation is not conceivable; for the common sense of the people would not tolerate it. . . .
>
> But what of this act? Its operation is not confined "to cities within certain territorial limits." It is general in its terms and refers to no classes of cities, but to all cities. It does not provide that it shall operate only "upon two cities situated in the same county." It does not exclude from its provisions and deny its privileges to all cities separated by a county line, or which are not wholly within the same county; but extends them to any two cities within the Commonwealth having natural, reasonable and necessary conditions of consolidation. . . .
>
> It may meet at the time of its passage the wants of but one community, but, if in the future it will meet these same wants in all other communities, the legislation is as general as if at the time of its passage there had been no special reason calling for it.[34]

The Act of 1905 was unconstitutional and the Act of 1906 was constitutional. Yet both would have accomplished the same end result with the same political repercussions. And in fact, the same parties met before the United States Supreme Court with the same arguments for and against consolidation. It would appear that, as Judge Brown put it, "restraints on the legislative power of control must be found in the Constitution of the State, or they must rest alone in the legislative discretion. If the legislative action operates injuriously to the municipalities or to individuals, the remedy is not with the courts. The courts have no power to interfere, and the people must be looked to, to right through the ballot box all these wrongs."[35] Then would it not be fair to ask whether the grounds for the decisions in *In re Pittsburgh* and the *Sample* case were technically sufficient but politically—that is, practically—irrelevant?

The "wrongs" referred to by Judge Brown show up in Justice

34. 221 Pa. 533, 62 Atl. 201 (1906).

35. *Id.* at 236, 352.

Moody's discussion of the controversy in *Hunter v. City of Pittsburgh.* So also do the available remedies:

> If the city of Allegheny should be annexed to the city of Pittsburgh, the taxpayers of Allegheny . . . will, in addition to the payment of taxes necessary to pay and liquidate their own indebtedness, have to bear and pay their proportion of the new indebtedness that must necessarily be created to acquire the facilities, properties, and improvements . . . in Pittsburgh; all of which would be of no benefit to the citizens and taxpayers of Allegheny. . . .
>
> At the election a majority of all the voters of the two cities approved the consolidation. It is agreed that the majoriy of the voters of the city of Allegheny voted against the consolidation, but that majority was overcome by a larger majority of the voters of the city of Pittsburgh in favor of the consolidation. . . .
>
> We have nothing to do with the policy, wisdom, justice or fairness of the act under consideration; those questions are for the consideration of those to whom the state has entrusted its legislative power, and their determination of them is not subject to review or criticism by this court. . . .
>
> The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or part of it with another municipality, repeal the charter and destroy the corporation. All this may be done conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.[36]

36. 207 U.S. 161, 174-181 (1907).

Again, in *Troop v. City of Pittsburgh*,[37] a case arising from the Allegheny-Pittsburgh consolidation, Judge Swearingen stated that it is:

> Well settled by authority . . . that the legislature had power to transfer liability for the pre-existing indebtedness of the constituent units of the greater city to the latter. . . . It is a purely legislative question. Consolidation of municipalities and annexation of one municipality to another are not prohibited by the constitution. The legislature may authorize such consolidation and annexation upon such terms as it may see fit to impose.

The law of annexation in Pennsylvania, on the basis of these proceedings, may be stated thus: The General Assembly may do much as it pleases, so long as it does not enact "special or local" legislation. But to the majority of voters of Allegheny who opposed consolidation with Pittsburgh it might just as well be stated instead: The General Assembly may do much as it pleases. It may even be supposed that under the circumstances the voters of Allegheny would have welcomed "special legislation" protecting their territorial and political integrity. Failing that, they could not otherwise hope to find solace in the courts.

But for reasons which should be clear by now, municipalities of any size or importance are in scant danger of losing their political integrity by way of annexation. The courts evidently are most anxious to follow the legislature in such matters and the legislature, bound as it is by public opinion, is faced with the public's efforts to make the law of annexation in Pennsylvania the law against annexation. These are some of the fundamental reasons why Pittsburgh cannot hope to achieve regional government through annexation. If it would take a long time to classify each municipality in Allegheny County, it would take even longer to mention here the various statutes under which annexation procedures are regulated. The situation is summed up by Dr. Hancock in his discussion of "Metropolitan Expansion:"

> The physical limits of most larger metropolitan subdivisions have been reached and it is only the most rural of local government units that does not have this problem facing it. This in Pennsylvania is more generally known as the annexation problem. Because each political subdivision has its own legislative powers, it follows that the procedure for annexing territory varies according to the class of subdivision. . . . Because it is most difficult to find independent governing units willing to relinquish their sovereignty, the record is void in recent times of any city having annexed a borough under this procedure. Other cities

37. 254 Pa. 172, 98 Atl. 1034, 1036 (1916).

cannot annex any part of a borough unless three-fifths of the inhabitants petition and with the approval of the borough council. (1931, June 23, P.L. 932, 53 P.S. § 35101 et seq.) Most annexing activity involves townships. At one time the procedure for acquiring land from these jurisdictions was relatively simple. Then, a borough or city merely had to secure a petition from a majority of the property owners wanting to be annexed. In 1937, however, the First Class Township Code was amended to require that the question of losing territory would have to be approved by all the electors in the township. (1937, July 2, P.L. 2803, No. 588; 53 P.S. § 59101 et seq.). No such approval has been granted although several elections have been held throughout the state on the question. Residents in a township residing close to a borough or city might want to become part of the larger municipality but the other residents of the township usually take a position opposing the move. The "left-behinders" are fearful that the loss of territory will produce added financial burdens on them and consistently vote against the idea. Consequently, the first class townships are enjoying complete immunity from losing territory to cities and boroughs. Second class townships have attempted to secure the same legislative immunity but have failed. Therefore, second class townships faced with the loss of territory change their classification to first class. A constant cry from the second class townships for protection from what they call "land grabs" by boroughs and cities has found some support in the Legislature.[38]

The courts have consistently followed the philosophy propounded by *Commonwealth v. Moir*. In the leading case of *Smith v. McCarthy*,[39] Judge Thompson said in reference to the consolidation of Pittsburgh with certain districts that:

> The legislature had the undoubted power to pass an act for consolidation; it may unquestionably enlarge, divide and change the boundaries of municipal corporations, and may do this without referring to the question of choice to a vote of the people. The instance of the consolidation of a number of independent outlying districts with the city of Philadelphia, by the Act of 1854, is but one of the numerous instances of the exercise of the power in this state. . . . The legislature, as said, might have proceeded as it did in regard to the city of Philadelphia, consolidating the whole territory in question without

38. HANCOCK, *op. cit. supra* note 4 at pp. 65-66.

39. 56 Pa. 359, 361 (1867).

> submitting it to a vote of the people. But it did not do so. . . . Even supposing the act to be, as alleged, unconstitutional, private parties can not interfere by bill to ask it to be so declared, unless on account of some special damages or injury to them in person or property. . . . Injury to the public peace or interests of the territory to be incorporated is not sufficient.

The court in *Kelly v. City of Pittsburgh*[40] was called upon to consider the propriety of Pittsburgh's annexation of plaintiff's farmland. Even plaintiff admitted that:

> It is competent for the legislature, with or without the consent of the citizens, to enlarge the limits of any town or city, and it is competent for the defendant (city), when the requirements of popular, commercial and mechanical interests, sanitary or protective municipal purposes require it, to apply to city uses, the full extent of her territorial limits.[41]

Courts in a host of cases on annexation involving townships and boroughs reiterate time and again the proposition, established in the *Hunter* case, *supra*, that there is nothing sacred about the delimitation of the political divisions of a state. *Cf. In re Annexation of Mill Creek Tp., Allegheny County;*[42] *Appeal of Braddock Tp., Allegheny County.*[43] In the *Mill Cheek* case, the lower court had found that Erie's annexation of a portion of Mill Creek township had split the township into two non-contiguous sections and was therefore "inherently unlawful." But Judge Trexler, speaking for the Superior Court, disagreed:

> Even if in times past, townships always consisted of compact territory, the legislature could change this either directly, or incidentally where such result follows from the carrying out of a purpose clearly expressed. . . . There may be inconvenience resulting, but the remedy for such inconvenience must be sought in proper proceedings under existing act of assembly, or if these be inadequate, additional legislation.[44]

He relied in part on his own language in a case decided two years previously, *In re Incorporation of the Borough of Forest Hills,*[45] where he said:

> The cutting out of a small portion of the township is merely incidental to the defining of the boundary of the new borough.

40. 85 Pa. 170, *aff'd.*, 104 U.S. 78 (1878).
41. 85 Pa. 170, 176 (1878).
42. 74 Pa. Super. 275, 278 (1920).
43. 48 Pa. Super. 52, 57, 24 A.2d 705, 706 (1942).
44. 74 Pa. Super. 275, 278 (1920).
45. 72 Pa. Super. 410, 422 (1918).

> There is nothing to show that the separated parts cannot form separate election districts. . . . In the extension of cities and boroughs, situations necessarily arise which destroy the regular contour of townships and reduce election districts very materially, but unless votes are disenfranchised, we see no reason for holding that such changes are unlawful. All the Constitution requires is that election districts shall be composed of compact and contiguous territory.[46]

CONCLUSION

From almost any vantage point Pennsylvania annexation law—constitutional, statutory and judicial—is a hodge-podge. Municipal law reflects the will of people arranged in an infinite variety of groupings, political, social and economic. Unlike most other branches of the law it cannot be identified with only a few interests which need to be balanced or regulated. It touches on individuals' preferences concerning living conditions, tastes in character of neighborhood, their friends, their homes, schools and churches—preferences which cannot always be codified in a legal sense or "balanced" in a way that would ensure a communal modus vivendi. The city is society in a nutshell. No wonder that civic disturbances arising out of annexation procedures seem to be tossed at the first opportunity by courts and legislatures alike back into the laps of the people themselves. The courts say the legislature may do as it pleases with municipal boundaries and the legislature, not the least bit comfortable with its freedom, provides that the alignment of municipal boundaries shall turn on the outcome of popular elections. "The cities and towns have been thrown back upon their own initiative and the competition between them makes schemes on a regional scale impossible."[47] The consolidation of Allegheny and Pittsburgh was very likely the last of its kind. The idea of metropolitan home rule in Pittsburgh persists, but it, too, may be an anachronism in its own time. Yet local government experts who in recent years have turned their attention to the problem uniformly agree that some type of joint action is necessary. "While cooperation among governments is certainly not new," according to the Pennsylvania Department of Internal Affairs, Bureau of Municipal Affairs, "many of the approaches to the metropolitan problem are still new enough to be considered experimental."[48]

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46. *Ibid.*

47. GUTKIND, *op. cit. supra* note 2, at 70.

48. Pennsylvania Department of Internal Affairs, Bureau of Municipal Affairs, *Selected Areas of Intergovernmental Cooperation*, edited by Sidney Wise vii-viii, (Harrisburg, 1962). It was also stated that:

> The federated area (two-tier) government inaugurated in Toronto, Ontario, in 1953 was the first such approach in North America. In 1957, a similar plan of federation was adopted in Miami and Dade County, Florida. Area-wide problems

APPENDIX

SELECTED PROVISIONS FOR ANNEXATION

1. General Municipal Law; Chapter 4—Annexation of Territory

§ 171 Annexation of adjacent municipality; petition to quarter sessions.

Any city, borough, township, or part of a township may become annexed to any contiguous city in the same county, in the following manner, namely:

There shall be presented to the court of quarter sessions of the county a petition signed by at least five per centum of the qualified voters, as shown by the registry lists for the last preceding general election of the city, borough, township, or part of a township, desiring annexation to city under this act. . . . 1903, April 28, P.L. 332,

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dealt with on an area basis; single-jurisdiction problems are handled by that jurisdiction.

A second approach . . . is the "Lakewood plan." Under this plan, cities which are generally suburban in character contract with the county unit of government for provision of their municipal services. The term, Lakewood plan, has been extended to apply to any municipality which contracts with another for services.

Other methods of solution involve the creation of special districts and authorities, but these have certain drawbacks. They add to the confusion of jurisdictional boundaries while generally solving only one problem at a time. Still others, annexation and consolidation, reduce the number of governmental units which must be dealt with and alleviate the problem in that sense, but seldom does a core area become large enough in this way to encompass a problem. In addition, neither annexation nor consolidation is popular where governments wish to retain their individual, corporate identities.

In Pennsylvania today, the interjurisdictional agreement has the greatest possibilities for facilitating cooperation.

See also: Sen. Joseph S. Clark, Cooperative effort between all governmental agencies needed to solve metropolitan problems, Internal Affairs, monthly bulletin, Vol. 27, No. 2, Feb.-March, 1959, 12. In reference to the jurisdictional effects of municipal authorities the Department of Internal Affairs has stated elsewhere that "Authorities have contributed to the solution of municipal jurisdictional problems. By forming an Authority, a group of small municipalities can provide for a type of service that must be a large-scale operation to be efficient. It may be argued that this is a palliative rather than a cure for the problems created by the presence of many small municipalities. Given current conditions, however, it may be the only way acceptable to all segments of the community. It can also be used to advantage in cases where the ideal boundaries for different types of service do not coincide.

"The Authority method, however, is not applicable to all types of service and therefore certain jurisdictional problems are not affected. The more basic criticism, however, is the one just noted. The Authority method is a palliative not a solution for most jurisdictional problems. Authorities may impede the movement toward a solution by creating the impression that the problem can be overcome without basic changes." SAUSE, *Municipal Authorities: The Pennsylvania Experience*, (Harrisburg, Commonwealth of Pennsylvania, Department of Internal Affairs, Bureau of Municipal Affairs) 44 (1962).

§ 1; 1905, April 19, P.L. 216, § 1, PA. STAT. ANN. tit. 53, [hereinafter cited as 53 P.S.] § 171. Repealed as to annexations to third Class Cities by Act 1923, July 11, P.L. 1047, § 10, and Act 1929, May 9, P.L. 1694, § 13; as to annexation of first class townships or part thereof, to city or borough by Act 1937, July 2, P.L. 2803, No. 588, § 10.

Chapter 5—Consolidation. (See text.)

2. Philadelphia Home Rule Charter; Chapter 33, Organization of territory; Article I, Annexation.

Hereafter, no political subdivision of this Commonwealth, nor any part thereof, shall be annexed to any city of the first class in accordance with the provisions of any existing law providing for such annexation, unless the voters of the entire political subdivision have first consented to such annexation. . . . Any such question shall not be submitted oftener than once in five years. 1949, April 6, P.L. 395, § 1, 53 P.S. § 13301.

3. Second Class Cities (Pittsburgh); Chapter 51, Organization and Annexation; Article III, Annexation. (See General Municipal Law).

Hereafter any city of the second class that entirely surrounds a portion of a township, the area of which is not greater than one hundred acres, may annex said portion of said township to said city by ordinance. 1923, May 31, P.L. 473, § 1, 53 P.S. § 22151; Repealed in part . . . in so far as it relates to the annexation of a township of the first class, or part thereof to a city or a borough, by Act 1937, July 2, P.L. 2803, No. 588, § 10.

4. Cities of Second Class A (Scranton); Chapter 72, Annexation.

Any borough or township may become annexed to a city of the second class A within the same county, under the circumstances hereinafter set forth and in the following manner, namely:

There shall be presented to the court of quarter sessions of the county a petition signed by qualified voters of the borough or township proposed to be annexed, equal in number to at least twenty per centum of the highest number of votes cast for any office at the last preceding general election in such borough or township. Such petition . . . shall request the court to direct that a vote be had upon the question as hereinafter provided. 1939, June 15, P.L. 372, § 1, 53 P.S. § 30251. . .

If it shall appear by the vote when counted that a majority in the borough or township . . . has voted for annexation and that a majority in the city of the second class A affected thereby has likewise voted for annexation, the court shall enter a decree accordingly. But if the vote in either such borough or township or in such city is unfavorable, the proceedings shall be dismissed, and, in such case, no new petition for the annexation of the same territory shall be submitted to a vote prior to the first day of November of the fourth year thereafter. . . . 1939, June 15, P.L. 372, § 4, 53 P.S. § 30254.

5. Cities of Third Class; Article V, Annexation of Territory; (a) Annexation of Boroughs, Townships and parts of Townships.

> Any borough having a population of less than ten thousand inhabitants, or any township or part of a township, contiguous to any city, whether wholly or partially within the same or different counties, may become annexed to any such city in the following manner:
>
> (a) In the case of a borough, the borough council may pass an ordinance for such annexation, whenever three-fifths of the taxable inhabitants of such borough shall present a petition, accompanied with the written consent of a majority in number and interest of property owners of the borough, asking for such annexation.
>
> (b) In the case of a township, or part thereof, whenever three-fifths of the taxable inhabitants of such township or part thereof shall present a petition to the council of said city, accompanied with the written consent of a majority in number and interest of property owners of such township or part of a township, asking for such annexation.
>
> (c) In the case of part of a township, when there are no taxable inhabitants residing therein, then whenever three-fifths of the property owners in number and interest of property situated therein shall present a petition to the council of said city asking for such annexation. . . . As amended, 1959, April 1, P.L. 16, § 1; 1959, July 10, P.L. 519, § 1, 53 P.S. § 35501.

6. First Class Township Code; Article I, Annexation of Territory.

> Whenever electors, equal to at least ten per centum of the highest vote cast for any office in any township of the first class contiguous to a city or borough at the last preceding general election, or whenever ten percentum of the qualified electors, residing within any part of a township of the first class contiguous to a city or borough, shall petition the council of such city or borough for the annexation of the township of the first class, or part thereof, to the contiguous city or borough, and for a referendum on the question . . . the council shall cause a question to be submitted at the primary election occurring at least sixty days thereafter, by certifying a resolution for submission of such question on the ballot or on voting machines at such election, both in such township and in the city or borough to which annexation is desired, in the manner provided by the election laws of this commonwealth.
>
> If a majority of the persons voting on such question in the entire township and a majority of the persons voting . . . in the city or borough shall vote "yes," then the township of the first class or part thereof, as the case may be, shall . . . be and become a part of the city or borough. . . . 1937, July 2, P.L. 2803, No. 588, § 1; 1951, May 9, P.L. 225, No. 34, § 1, 53 P.S. § 59101.
>
> Hereafter no township of the first class, nor any part of any such township, shall be annexed to a contiguous city or borough in ac-

cordance with any existing law providing for such annexation, unless the voters of the entire township have first consented to such annexation. (Repealed as to boroughs by Act of 1947, July 10, P.L. 1621, § 95.) Whenever any proceeding for such annexation shall be commenced, the same shall not be concluded and the annexation shall not become effective until there has first been submitted to the electors of the entire township, in accordance with the election law for the submission of such questions, a proper question to ascertain the will of the electors with respect to such proposed annexation. . . . If at any such election, a majority of those voting on such question shall consent, . . . then such annexation may be made and concluded in the manner provided by law. . . . Any such question shall not be submitted oftener than once in five years. . . . 1937, May 13, P.L. 620, § 1, 53 P.S. § 59110.

7. Second Class Township Code; Article I, Annexation of Territory.

Whenever the annexation of territory in a second class township to a borough or city or township is desired, a majority of the freeholders in the proposed annexed territory shall petition the borough, city or township requesting the annexation. . . . 1953, July 20, P.L. 550, § 1, 53 P.S. § 67501.

The petition, after its approval by council, commissioners or supervisors, shall be certified to the court of quarter sessions by the secretary of the borough or township or clerk of the city. If, within thirty days thereafter, no person aggrieved by the ordinance complains to the court, asking for the appointment of a board of commissioners as a fact-finding body, the court shall determine the question, and, if it is satisfied as to the legality of the proceeding and the propriety of the annexation as serving public interests, shall affirm the annexation. 1953, July 20, P.L. 550, § 2, 53 P.S. § 67502.